Supreme Court of the United States

OCTOBER TERM 1941

No. [illegible] 10

MITCHELL CLIFTON ANDERSON, JOHN EDWARD [illegible]
EARL HUBBARD, et al.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

MOTION FOR LEAVE TO FILE BRIEF AND [illegible] ON BEHALF OF NATIONAL FEDERATION [illegible] CONSTITUTIONAL LIBERTIES *AMICUS* [illegible]

ABRAHAM J. ISSERMAN,
NATHAN WITT,
Counsel for Amicus Curiae

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Supreme Court of the United States

OCTOBER TERM 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, FELTON MOORE WOODWARD, MARION LUTHER ELLIS, ROBERT LEE BALLEW, JOHN DAVID QUEEN, ROBERT LEE RHODES,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

MAY IT PLEASE THE COURT:

The undersigned, as counsel for the National Federation for Constitutional Liberties, an unincorporated association, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae*. Consent to such filing has been duly given by the parties hereto, including the Solicitor General, and the Clerk of this Court has been duly advised thereof.

The National Federation for Constitutional Liberties is pledged to the defense and extension of the Bill of Rights. Its members and affiliates, consisting of individuals, trade unions, and civic organizations throughout the United States, are deeply concerned with every threatened invasion of the freedoms therein guaranteed.

The National Federation for Constitutional Liberties is convinced that in these times a reaffirmation by this Court

against the use of coercion and duress by police officers, commonly known as the "third degree", will be further evidence of the strength of our institutions, now under such bitter attack. The Federation's interest in this case is therefore limited to the constitutional problem. The Federation believes that the decisions below violate the provision contained in the Fifth Amendment that "No person * * * shall be compelled in any criminal case to be a witness against himself * * * ", and will, if unreversed, serve as a precedent for the curtailment of the beneficent protection which that amendment affords the people against over-zealous police officers.

ABRAHAM J. ISSERMAN,
NATHAN WITT,
Counsel for National Federation
for Constitutional Liberties.

Supreme Court of the United States

OCTOBER TERM 1941

No. 852

MITCHELL CLIFTON ANDERSON, JOHN EDWARD SIMONDS, EARL HUBBARD, et al.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

BRIEF ON BEHALF OF NATIONAL FEDERATION FOR CONSTITUTIONAL LIBERTIES *AMICUS CURIAE*

Statement

This brief is directed solely to the constitutional question which arises because of the method by which evidence used to convict the petitioners was obtained.

The facts and the background of the alleged crime, detailed in the briefs of the parties, need not be repeated here. The only facts with which we are here concerned relate to certain activities of agents of the Federal Bureau of Investigation who acted in concert with the Sheriff of Polk County, Tennessee. These facts are set forth in the argument.

ARGUMENT

The use in evidence of confessions or statements, secured by police officers under circumstances amounting to coercion and duress, was a violation of petitioners' rights guaranteed under the Fifth Amendment.

The question is whether the confessions in this case were made under such circumstances that they can not be regarded as voluntarily made. If so, the proposition that they were inadmissible is indisputable.

> *Ziang Sung Wan* v. *United States*, 266 U. S. 1;
> *Chambers* v. *Florida*, 309 U. S. 227.

The circumstances under which petitioners were apprehended and under which the confessions of six of them were obtained are set forth in the brief in support of the petition for certiorari, particularly at pages 14 to 21. A brief summary is pertinent here.

After there had been two dynamitings of power lines belonging to the Tennessee Valley Authority in Polk County, Tennessee, two agents of the Federal Bureau of Investigation, Mann and Roach, were sent on April 16, 1940, to investigate. In their investigations they worked intimately and constantly with Sheriff Biggs of Polk County, who had been playing the role of chief guard for the Tennessee Copper Company during a long, bitter and still current strike (R. 165-332; 550-552).

At about 3.30 on the morning of April 23rd, Biggs, accompanied by one Freed Long (who became the government's principal witness at the trial), met Agent Mann and advised him that there would be another dynamiting of the power lines at 1.20 the following night. Actually the dynamiting occurred at 1.17 during the night of April 23rd (R. 466-467). Sheriff Biggs advised the federal agents that he thought eighty or ninety of the strikers were guilty.

and went forward with the work of taking those men into custody so that the agents could question them (R. 192). The men were picked up without warrants or legal process of any kind; petitioner Robert Lee Ballew was seized in the State of North Carolina and taken into the State of Tennessee (R. 745-748; 805-806; 814). The prisoners were taken to a building in Copperhill, formerly used as a Y.M.C.A. but now owned by the Copper Company and used by the Sheriff to quarter a large number of special deputies. From time to time thereafter the men were taken to the Copperhill City Jail or to the County Building in Copperhill (R. 546-553).

Petitioners Felton Moore Woodward, John Edward Simonds and Earl Hubbard were taken into custody on April 24th and were questioned by the federal agents shortly after they were taken to the Y.M.C.A. building. On that day and the following day, April 25th, several more agents arrived and joined in the questioning. These petitioners were questioned night and day, by the agent and by the Sheriff. At times the petitioners were taken to the City Jail to spend the night, where some of them had to sleep on the concrete floor in crowded cells. While they were being held at the Y.M.C.A., armed deputy sheriffs circulated through the building. None of them was allowed to see friends or relatives, lawyers or advisers. After this treatment, day after day and night after night, these petitioners, who had been picked up on April 24th, made their statements on April 28th and April 29th. Petitioners John David Queen, Robert Lee Rhodes and Robert Lee Ballew were treated in substantially the same fashion, except that they were held for shorter periods but for more than twenty-four hours (R. 652-678; 681-764).

During the questioning of petitioners, the agents constantly told them they had "confidential information" as to the guilty persons, and would frequently tell petitioners that their answers were contrary to this "confidential information". Petitioner Woodward required about seven

hours to make his confession; the agents throughout kept reminding him of their "confidential information" (R. 328-329; 339-343; 353-355; 398-399).

This summary includes testimony of government witnesses. Campbell, the Chief Deputy Sheriff, testified in addition that the federal agent in charge had told him that he, the agent, would recommend that any person who made a statement would be placed on probation, and that he, Campbell, had passed this on to four or five of the prisoners in the City Jail (R. 272-273).

The petitioners added further details. They were abused; they were deprived of food and of places to sleep (R. 203-253); at times they slept in the same room with a large number of special deputies (R. 202); at times they were given nothing to drink, at times coffee which seemed doped (R. 206-208); they were called "damn liar" continuously (R. 205-206), "God damn liar" (R. 254), "God damn lying son of a bitch" (R. 239); they were promised light sentences if they confessed, and fifteen to thirty-five years if they did not (R. 230-231). Petitioner Hubbard was deprived of the right to smoke, deprived of water, deprived of his much-needed glasses (R. 204-207). On one day he was questioned in continuous relays from early morning until late afternoon, so that he finally needed a doctor (R. 204-205). Petitioner Queen was told that if he made a statement he would be able to go home and see his baby who was seriously ill with bronchial pneumonia (R. 682-683).

These facts are sufficient to bring the case within the facts in *Chambers* v. *Florida*, supra, the leading recent case on the subject.* The facts in that case are succinctly summarized in the opinion as follows:

> "Here, the record develops a sharp conflict upon the issue of physical violence and mistreatment, but shows, without conflict, the drag net methods of arrest on suspicion without warrant, and the protracted questioning and cross questioning of these ignorant young

* The test of voluntariness is the same under the Fifth Amendment as it is under the Fourteenth. Thus, *Wan* v. *United States*, supra, is cited as authority in the *Chambers* case, 309 U. S. at page 239, footnote 13.

colored tenant farmers by State officers and other white citizens, in a fourth floor jail room, where as prisoners they were without friends, advisers or counselors, and under circumstances calculated to break the strongest nerves and the stoutest resistance. Just as our decision in Brown v. Mississippi was based upon the fact that the confessions were the result of compulsion, so in the present case, the admitted practices were such as to justify the statement that 'The undisputed facts showed that compulsion was applied.'

For five days petitioners were subjected to interrogations culminating in Saturday's (May 20th) all night examination. Over a period of five days they steadily refused to confess and disclaimed any guilt. The very circumstances surrounding their confinement and their questioning without any formal charges having been brought, were such as to fill petitioners w[illegible] terror and frightful misgivings.

Some were practical strangers in the community; three were arrested in a one-room farm tenant house which was their home; the haunting fear of mob violence was around them in an atmosphere charged with excitement and public indignation. From virtually the moment of their arrest until their eventual confessions, they never knew just when anyone would be called back to the fourth floor room, and there, surrounded by his accusers and others, interrogated by men who held their very lives—so far as these ignorant petitioners could know—in the balance. The rejection of petitioner Woodward's first 'confession,' given in the early hours of Sunday morning, because it was found wanting, demonstrates the relentless tenacity which 'broke' petitioners' will and rendered them helpless to resist their accusers further. To permit human lives to be forfeited upon confessions thus obtained would make of the constitutional requirement of due process of law a meaningless symbol" (309 U. S. at pages 238-240).

In this case, as in the *Chambers* case, "drag net methods of arrest on suspicion without warrant" were used. Here in fact Sheriff Biggs picked up a group of men selected only from among the strikers whom he had been fighting for many months. Here, too, there was "protracted ques-

tioning and cross questioning" of the prisoners, in this case by persons with the authority of the Federal Government behind them. The prisoners here, like the prisoners in the *Chambers* case, "were without friends, advisers or counselors". In the *Chambers* case, the suspects were questioned for five days; here some of them were questioned for as much as six days. Here, although the petitioners were not subjected to "the haunting fear of mob violence", they were constantly surrounded and encompassed by armed men whom they had come to know as enemies—Sheriff Biggs and his special deputies.

In this case there was still more. There were false promises of probation and light sentences, alternating with abuse, swearing, and the use of vile epithets. There was deprivation of food, of water, of sleep; there was the compulsion to sleep on concrete floors and in the same quarters as special deputies. There was the torture of being deprived of spectacles with which to see, and the torture of being told that one could see his desperately sick baby again if one made a statement to the agents' satisfaction.

If "The undisputed facts showed that compulsion was applied" in the *Chambers* case, the undisputed facts show that compulsion was applied in this case. The confessions were clearly inadmissible.

See also:

Bram v. *United States*, 168 U. S. 532;
White v. *Texas*, 310 U. S. 530.

The brief in support of the petition, at pages 21-24, effectively disposes of the cases cited in the opinion of the Circuit Court of Appeals, and shows that those cases are clearly distinguishable on their facts. The recent case of *Lisenba* v. *California*, 86 L. Ed. 179, is also distinguishable.*

*It is important to note that Mr. Justice Black, who wrote for the Court in the *Chambers* case, dissented in the *Lisenba* case, in an opinion concurred in by Mr. Justice Douglas.

The facts appear sufficiently in the following quotations from the prevailing opinion:

> "In view of the conflicting testimony, we are unable to say that the finding below was erroneous so far as concerns the petitioner's claims of physical violence, threats or implied promises of leniency. There remains the uncontradicted fact that on two occasions, separated by an interval of eleven days, the petitioner was questioned for protracted periods. He made no admission implicating him in his wife's death during, or soon after, the interrogations of April 19, 20, and 21. If, without more, eleven days later confessions had been forthcoming we should have no hesitation in overruling his contention respecting the admission of his confessions.
>
> Does the questioning on May 2d, in and of itself, or in the light of his earlier experience, render the use of the confessions a violation of due process? If we are so to hold it must be upon the ground that such a practice, irrespective of the result upon the petitioner, so tainted his statements that, without considering other facts disclosed by the evidence, and without giving weight to accredited findings below that his statements were free and voluntary, as a matter of law, they were inadmissible in his trial.
>
> * * * * * * * *
>
> We have not hesitated to set aside convictions based in whole, or in substantial part, upon confessions extorted in graver circumstances. These were secured by protracted and repeated questioning of ignorant and untutored persons in whose minds the power of officers was greatly magnified; who sensed the adverse sentiment of the community and the danger of mob violence; who had been held incommunicado, without the advice of friends or of counsel; some of whom had been taken by officers at night from the prison into dark and lonely places for questioning. This case is outside the scope of those decisions.
>
> Like the Supreme Court of California we disapprove the violations of law involved in the treatment of the petitioner, and we think it right to add that where a prisoner held incommunicado is subjected to question-

ing by officers for long periods, and deprived of the advice of counsel, we shall scrutinize the record with care to determine whether, by the use of his confession, he is deprived of liberty or life through tyrannical or oppressive means. Officers of the law must realize that if they indulge in such practices they may, in the end, defeat rather than further the ends of justice. Their lawless practices here took them close to the line. But on the facts as we have endeavored fairly to set them forth, and in the light of the findings in the State courts, we cannot hold that the illegal conduct in which the law enforcement officers of California indudged by the prolonged questioning of the prisoner before arraignment, and in the absence of counsel, or their questioning on May 2, coerced the confessions, the introduction of which is the infringement of due process of which the petitioner complains. The petitioner has said that the interrogation would never have drawn an admission from him had his confederate not made a statement; he admits that no threats, promises, or acts of physical violence were offered him during this questioning or for eleven days preceding it. Counsel had been afforded full opportunity to see him and had advised him. He exhibited a self-possession, a coolness, and an acumen throughout his questioning, and at his trial, which negatives the view that he had so lost his freedom of action that the statements made were not his but were the result of the deprivation of his free choice to admit, to deny, or to refuse to answer" (86 L. Ed. at pp. 190-191).

The mere statement highlights the differences in the cases. In the *Lisenba* case, there was not the repeated and persistent questioning there was here. The prisoner was permitted counsel and was not held incommunicado. He was not constantly surrounded by large numbers of armed and hostile officials. He was not made to suffer physical pain by being refused food and water, by being forced to sleep on beds of stone or in hostile surroundings. There were no threats, there were no promises. Even so, the opinion in the *Lisenba* case recognized that the lawless practices of the officers there "took them close to the line".

If that is so, the lawless and inhumane acts of the officers in this case took them far beyond the line which separates a statement voluntarily made from one made as the result of the "third degree".

CONCLUSION

It is therefore respectfully submitted that this case is one calling for exercise by this Court of its supervisory powers in order that the error herein pointed out may be corrected; that the law may be properly and authoritatively defined and the judgment of the Circuit Court of Appeals for the Sixth Circuit be reversed to the end that justice be done to petitioners and that to such end a writ of certiorari should be granted and this Court review and reverse said decision.

Respectfully submitted,

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